HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case

W.P. No. 197/02 (M/S)

Royal Hotel NTL

Vs.

State and others.

Approved for reporting.

~~**Not Approved for reporting**~~

Date of decision: 25th April 2007

Initial of Judge :

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HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 197 of 2002 (MS)

Nainital Hotel Co. (P) Ltd; Royal Hotel,
Mallital, Nainital through its Chairman G.I.
Punvani

..... Petitioner

Versus

1. State of Uttaranchal
2. Additional Chief Revenue Commissioner
   Circuit Court, Nainital
3. Collector, Nainital
4. Additional District Magistrate (F & R)
   Nainital ..... Respondents

Smt. Tehmina Punwani, Sr. Advocate for the petitioner
Sri M.S. Negi, Senior Advocate General for the respondents.

Dated: April 25, 2007

Hon'ble Rajesh Tandon J.

Heard Smt. Tehmina Punwani, Sr. Advocate assisted by Ms. Menka Tripathi and Sri M.S. Negi, Senior Advocate, the then General for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 17.4.2002 and 24.10.2001 passed by respondents no. 2 and 4 respectively.

Briefly stated according to the petitioner, Nainital Hotel Company is a Company registered under Indian Companies Act, 1956 having its registered office at 5- Mall Avenue, Lucknow, The Royal Hotel Estate Property, situated at Masllital, Nainital is owned by several co-owners who rented the entire property to the Nainital Hotel Co. (P) Ltd. who is running the Royal Hotel business. Smt. Leela Devi Sah who had 13/16 share in the Royal

Hotel property sold her share to the petitioner for a sale consideration of Rupees thirteen lakhs. An agreement to sell was entered upon and was duly registered with the sub Registrar, Nainital. The sale deed was to be executed after the Seller obtained the Income Tax clearance. Smt. Leela Devi Sah obtained Income Tax clearance and thereafter 1.4.1989 was fixed for execution of sale deed. According to the petitioner Smt. Leela Sah did not come to execute the sale deed hence, the petitioner filed an injunction suit No. 164/89 against her for restraining her from selling her 13/16 share to any one else. A temporary injunction was issued against her on 16.10.1989. Smt. Leela Sah did not come to execute thesale deed and thereafter the petitioner filed a suit No. 531/1991 before Civil Judge, Nainital for specific performance of contract against her to execute the sale deed in accordance with the registered agreement to sell. This suit was decreed against Smt. Leela Sah on 20.10.1992. Pursuant to that decree she executed the sale deed on 2.12.1992 on a sale consideration of Rs.thirteen lakhs on which the requisite stamp duty of Rs.1,88,500/- was affixed.

The Sub Registrar referred the case to the Collector, Nainital under section 47-A (2) of the Indian Stamp Act vide report dated 9.12.1992. A Stamp Case No. 52 /103 was registered against the petitioner. The Additional District Magistrate on the basis of the report dated 4.12.1993 of the Tehsildar vide order dated 15.12.1993 assumed the market value of the property for Rs.19,38,01,750/- and for 13/16 share for Rs.15,74,63,921.87 on which stamp duty was worked out at Rs.2,26,43,780/-. Further 100% penalty was imposed and thus the stamp duty was worked out at Rs.4,52,87,560/-.

Against that order the petitioner filed a revision before the Board of Revenue, Allahabad, which was registered as Revision No. 1145 of 1993-94. The revision was allowed vide order dated 31.8.1994 and the case was remanded back to the Collector to decide it afresh on merits. Thereafter the case was decided afresh by the Additional District Magistrate, Nainital on 22.10.1997, feeling aggrieved the petitioner filed a revision before the Board of Revenue, Allahabad which was registered as Revision No. 588/1997-98. The revision was allowed vide order dated 10.9.1999 and the impugned order was set aside. The case was again remanded to the Additional Collector, Nainital for a fresh decision.

After remand of the case fresh proceedings were started as Stamp Case No. 52/21 of 1999-2000 by the Additional District Magistrate, Nainital. The petitioner filed documentary evidence in the case. The matter remained pending for a long and, therefore, the petitioner filed a writ petition No. 2467/2001 before the High Court and vide order dated 17.8.2001 High Court has allowed the writ petition and directed the A.D.M. (E) Nainital to decide the case within two months from the date of production of certified copy of that order. The petitioner alleged that thereafter several dated were fixed by the A.D.M. (E) but order was passed on 24.10.2001. Feeling aggrieved the present writ petition has been filed by the petitioner.

The counsel for the petitioner has argued that the order passed by the Additional District Magistrate (F & R.) Nainital shows that there has been a complete absence of application of mind towards the pleadings and evidence on the record filed by the parties. The Additional District Magistrate has made a capital of the report of the Tehsildar dated 4.12.1993 and has

completely ignored the circle rate relied upon by the petitioner in order to prove market rate of the property as contained under section 47-A(2) of the Act. The learned counsel for the petitioner has urged that the Sub Registrar has not applied his mind before making reference under section 47-A (2) of the Indian Stamp Act.

Section 47-A (2) reads as under:

(2) Without prejudice to the provisions of sub section (1) if such registering officer while registering any instrument on which duty is chargeable on the market value of the property has reason to believe that the market value of the property which is the subject of such instrument, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

As will appear from sub clause (2) of Section 47-A that the market values has to be determined in accordance with the valuation of the property i.e. according to the circle rate.

Rule 341 provides that method for the purpose of payment of Stamp duty. Rule 340 provides the rules for determining the market value of certain instruments and Rules 341 provides the criteria.

The subject matter of instrument being covered under Rule 341 (1), Rule 341 is quoted below:-

341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47-A(1) of the

Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below:

(i) Where the subject is land—

(a) in case of Bhumidhari—800 times the land revenue;

(b) in case of Sirdari land—400 times the land revenue;

(c) Where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument 25 times the annual average of such profits;

(d) where the land is not assessed to revenue and not profits have arisen from it during the three years immediately proceeding the date of the instrument 400 times the assumed annual rent;

(e) where the land is non-agricultural and is situate within the limits of any local body referred to in clause © of the sub-rule (i) Rule 340-equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument,

(ii) where the subject is grove or garden---

(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the trees standing thereon shall be worked out according to the average price of the trees of the same size, and age prevailing in the locality on the date of the instrument.

(b) If not assessed to revenue or in exempted from it, the value thereof shall be determined at 20 times the annual rent plus the premium or 20 times of the annual average of income which has arisen during the three years

immediately preceding the date of instrument and the value of the trees thereon shall be determined in accordance with Rule 341 (ii)(a).

(iii) Where the subject is building—

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants---25 times the actual or assessed annual rental value, whichever is higher as the case may by;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants-25 times the actual or assumed annual rental value, whichever is higher as the case may be."

Learned counsel for the petitioner taking into consideration Clause (B) of Clause(ii) has submitted that the stamp duty has to be determined after taking into consideration the twenty five times of the actual or assumed annual rental value of the income which has arisen during three years immediately preceding the deed of the instruments as well as the value of the trees standing thereon.

Rule 347 further provides that on receipt of the reference under Sub Section (1) or sub-section (2) of Section 47-A or under Rule 344, 345 or 346, the Collector shall issue a notice to the executant or such other person as may be liable to pay the duty and require him to show cause, within a period of thirty days form the receipt of such notice, why proceedings should not be started for determining the actual market value of the property. On receipt of the written reply, or if no such reply is received, within the time specified, the Collector shall proceed accordingly. Rule 347, 349 and 350 are quoted below:-

"347. on receipt of the reference under Sub Section (1) or sub-section (2) of Section 47-A or under Rule 344, 345 or 346, the Collector shall issue a notice to the executant or such other person as may be liable to pay the duty and require him to show cause, within a period of thirty days form the receipt of such notice, why proceedings should not be started for determining the actual market value of the property. On receipt of the written reply, or if no such reply is received, within the time specified, the Collector shall proceed accordingly.

349. The Collector shall, in the course of enquiry, consider such documentary evidence and take such oral evidence as may be relevant or material regard to the subject-matter involved and complete the enquiry, as far as possible, within a period of three months and determine the market-value which shall not be less than that determined in accordance with Rule 341.

350. If, as a result of such enquiry, the market-value as expressed in the instrument appears to be fully and truly set forth, and the instrument is found to be fully stamped according to such value, it shall be returned to the person who made the reference with a certificate to that effect. If, on the other hand, the instrument appears to be under-valued and not duly stamped, it shall be impounded by the Collector and necessary action taken of it according to the relevant provision of the Act."

In ***Ramesh Chandra Bansal Vs. District Magistrate/Collector Ghaziabad 1999 (90) RD 499,*** the matter came up before the Apex Court and the Apex Court has observed that the object of the Indian Stamp Act is to calculate

the proper stamp duty on an instrument or conveyance on which such duty is payable. The Apex Court has observed as under:-

"The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under-valuation of a property or owner consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast an authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned."

An application was moved by the petitioner on 5.9.1990 to the Additional District Magistrate (F & R), Nainital for

adjudication of value of 13/16 share for the purpose of stamp duty and the A.D.M. called for the report of the Tehsildar. Tehsildar furnished his report on 10.12.1990. In his report the Tehsildar instead of valuing the building, valued the land on which the building was standing and the land appurtenant to it on circle rate as fixed by the Collector for Dina Lodge. He valued 65000 Sq. ft. @ Rs.800/- per feet and value of 13/16 share was assessed for Rs.4,91,094/-. The report of Tehsildar is annexure 2 to the writ petition.

The petitioner valued the building on the basis of assessment of house tax according to Rule 341 (iii) (a) of the Indian Stamp Act, as under:

Actual annual rent of 13/16 share Rs.10791 × 25 = 2,69,775/-

Assessed for House tax 13/16 share Rs.13,490 × 25 = Rs.3,37,250/-.

Thus as per above calculation stamp duty was payable on Rs.3,37,250/- however, as per mutual understanding the sale consideration was Rs.13,00,000/- therefore, the stamp duty was paid on this amount.

According to the petitioner Revision No. 588 of 1997-98 was filed against the order of A.D.M. (E) Nainital and vide order dated 10.9.1999, the A.D.M. was directed to inspect the property, if the same was situated on Mall Road or Upper Kaladungi Road, Mallital. The A.D.M. (E) inspected the site and has confirmed in his order dated 24.10.2001 that the Royal Hotel Estate property is situated on Upper Kaladhungi Road and not on Mall Road. The property was wrongly shown to be situated on Mall Road, although land value had to be considered as the property sold was a building and appurtenant

land was a part of the building and could not be assessed. According to the petitioner the total value of land measuring 8000 sq. meters was worked out as Rs.4,00,00,000/- this was 16/16 land whereas only 13/16 portion of the land was sold to the petitioner and even price of the trees was assessed to be Rs.13,000/-.

The Apex Court in **Administrator General of West Bengal vs. Collector, Varanasi (1988) 2 SCC 150** has held that the land and building is one kind of property. They must be valued as one unit. The Apex Court has held as under:

> *"The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as on author put it, is the prediction of an economic event viz. the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available"*

In view of the above, the matter is sent back to the Additional Collector, Nainital who shall re-assess the market value of the property at the time of alleged sale deed, in the light of the observation made above and according to law. He shall also decide as to whether the property is situated on Upper Kaladhungi Road (Dina Lodge) and or on the Mall road. Both the parties shall be at liberty to adduce fresh evidence, if they desire.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 25.4.2007 **Rajesh Tandon, J.**

*Dhyani